

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DEL MAR UNION SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014040294

ORDER DENYING WITHOUT
PREJUDICE REQUEST FOR
CONTINUANCE

On April 16, 2014, the Del Mar Union School District (District) and Parent on behalf of Student filed a joint request to continue the mediation, prehearing conference, and due process hearing dates in this matter. The request was made using the form provided by the Office of Administrative Hearings for requests for continuance made jointly by all parties to a due process proceeding. In this case, the form was signed by the attorney for District and by Student's parent.

On April 17, 2014, Student's parent filed an opposition to the joint request for continuance in which she withdraws her consent to it. Parent states that she believed it was OAH requesting the continuance and not opposing counsel. The document filed by Parent with OAH does not indicate that it was served on District or its attorney.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

The OAH form for requesting a joint continuance does not contain a requirement that the parties provide a specific reason for the continuance if it is the first request made by any

of the parties. No reason for the requested continuance was therefore necessary and no reason was supplied by the parties.

However, Parent has since withdrawn her consent for the continuance. If District wishes to renew the motion as a sole moving party, it will need to supply a declaration in support setting forth the reasons the continuance is necessary.

Therefore, the request for continuance is denied without prejudice to District re-filing the motion along with a supporting declaration. All hearing dates and timelines shall proceed as presently calendared.

IT IS SO ORDERED.

DATE: April 17, 2014

/s/

DARRELL LEPKOWSKY
Acting Administrative Law Judge
Office of Administrative Hearings